

SUBMITTED VIA ELECTRONIC MAIL

[kwan.caroline@epa.gov](mailto:kwan.caroline@epa.gov)

April 22, 2019

Ms. Caroline Kwan  
Remedial Project Manager  
United States Environmental Protection Agency  
Region II  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

**Re: Freedom of Information Act Request  
The Newtown Creek Superfund Site Study Area**

Dear Ms. Kwan:<sup>1</sup>

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, and 40 C.F.R. § 2.100, *et seq.* ("FOIA"), this letter serves as a request for records, including electronic records and information, more specifically described below, related to the Newtown Creek Superfund Site Study Area.<sup>2</sup>

Specifically, we request the production of any and all documents and records maintained by any division, program or branch within the U.S. Environmental Protection Agency ("EPA"), Region II's offices, concerning any proposals, proposed plans, presentations, written communications, or discussions regarding any potential Early Action response action or remedy, including pre-design investigations ("Early Action") that in any way encompass or concern the Newtown Creek Study Area or any portion thereof, such as the first two miles of the Newtown Creek Study Area. (By way of example only, the nature and types of these documents are further described below.)

This FOIA request includes documents that concern Early Action that were provided by the Newtown Creek Group ("NCG"), or any of its members,<sup>3</sup> to the EPA or sent by the EPA to the NCG, as well as similar documents sent to or received from the following stakeholders: the New

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<sup>1</sup> Consistent with the direction on the Agency's website, we have addressed this request to your attention as we anticipate you are the officer either in possession of or with the best knowledge of the documents sought by the request. We have simultaneously submitted a copy of this request to FOIAonline.gov.

<sup>2</sup> The Newtown Creek Superfund Site Study Area ("Newtown Creek Study Area") is the site area described more specifically in Section I of the June 2011 Administrative Settlement Agreement and Order on Consent ("ASAOC") for Remedial Investigation and Feasibility Study for Newtown Creek. The site is also described in footnote 1 of the November 2016 Draft Remedial Investigation Report Remedial Investigation/Feasibility Study for Newtown Creek.

<sup>3</sup> We understand that the NCG is comprised of the following companies: Phelps Dodge Refining Corporation ("PDR"); Texaco, Inc.; BP Products North America Inc.; The Brooklyn Union Gas Company d/b/a National Grid New York; and ExxonMobil Oil Corporation.

York Department of Environmental Conservation (“NYSDEC”); the US Army Corps of Engineers (“USACE”); the City of New York (“the City”), including the New York City Department of Environmental Protection (“NYCDEP”), or any other agency of the City; and, any public interest group or other stakeholders.

This request includes, but is not limited to, any and all documents concerning the NCG or any of its members proposal to conduct Early Action response activities or remedies, including documents that relate (by way of example) to the following:

- Correspondence, including emails;
- Any correspondence, emails or other written communications with comments regarding the proposed Early Action;
- Power Point presentations;
- Documents regarding the proposed Early Action itself;
- Documents regarding potential Focused Feasibility Studies (“FFS”);
- Documents regarding potential sediment resuspension scenarios;
- Documents regarding potential recontamination scenarios;
- Draft or final Administrative Settlement Agreements and Orders on Consent (“ASAOCs”) concerning Early Action and any documents regarding potential ASAOCs for Early Action;
- Draft or final Scopes of Work for a proposed FFS related to Early Action; and,
- Proposed or final schedules for conducting an FFS and/or Pre-Design Investigations for Early Action.

We also request copies of all documents in EPA’s records, including correspondence, reports, data, maps and figures prepared by environmental consultants or vendors acting in any capacity for or at the request EPA, the NCG, the City, NYSDEC, NYCDEP or USACE related to any proposal or plans for Early Action.

This request encompasses records of any kind and regardless of format, medium, or physical characteristics. If it is the EPA’s position that any portion of a responsive record is exempt from FOIA disclosure, please provide an index that describes each document withheld and the statutory basis for withholding the document with specificity sufficient to support a reasoned judgment as to whether the material is properly exempt. In the event that only certain portions of the responsive records are properly exempt from disclosure, please disclose the non-exempt portions.

This request should be considered an ongoing request. Any records which come into EPA’s possession in the future should be produced as they become available.

We are willing to pay fees for this request up to a maximum of \$500. If you estimate that the fees will exceed this amount, please contact me.

# NATHAN

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Please respond to this request in writing within twenty (20) working days as required under 5 U.S.C. § 552(a)(6)(A)(I) and 40 C.F.R. § 2.104(a). If you have any questions about this request or foresee any problems in releasing fully the requested records within the twenty-day period, please contact me at (202) 505-1906 or [jsimon@nathaninc.com](mailto:jsimon@nathaninc.com).

Sincerely yours,



John A. Simon  
Senior Vice President

cc:

FOIAonline.gov

Regional Freedom of Information Officer  
U.S. EPA, Region 2  
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New York, NY 10007-1866